

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MARVEL CHARACTERS, INC.,

Plaintiff,

v.

PATRICK S. DITKO, in his capacity as Administrator of the Estate of Stephen J. Ditko,

Defendant.

PATRICK S. DITKO, in his capacity as Administrator of the Estate of Stephen J. Ditko,

Counterclaimant,

v.

MARVEL CHARACTERS, INC. and DOES 1-10, inclusive,

Counterclaim-Defendants.

Case No.: 1:21-cv-7957-LAK

Hon. Lewis A. Kaplan

**DECLARATION OF MOLLY M.
LENS IN SUPPORT OF
MARVEL CHARACTERS, INC.'S
OPPOSITION TO DEFENDANT
PATRICK S. DITKO'S MOTION
FOR SUMMARY JUDGMENT**

Oral Argument Requested

I, Molly M. Lens, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a partner at O'Melveny & Myers LLP, counsel for plaintiff Marvel Characters, Inc. ("MCI") in this action, and a member of the Bar of this Court. I submit this declaration in support of MCI's opposition to Defendant Patrick S. Ditko's ("Defendant") motion for summary judgment based on my personal knowledge and review of the documents referenced herein. If called and sworn as a witness, I could and would testify competently thereto.

2. Attached hereto as **Exhibit 81** is a true and correct copy of excerpts from Defendant's February 14, 2023 deposition transcript in this matter.¹ This excerpt was not included in Exhibit 1 to my May 19, 2023 declaration, which is an excerpt from the same deposition.

3. Attached hereto as **Exhibit 82** is a true and correct copy of excerpts from James Steranko's February 10, 2023 deposition transcript in this matter.

4. Attached hereto as **Exhibit 83** is a true and correct copy of excerpts from Michele Hart-Rico's February 2, 2023 deposition transcript. This deposition was taken as part of consolidated discovery in this and other matters, and Ms. Hart-Rico was represented by the same counsel of record as Defendant.²

5. Attached hereto as **Exhibit 84** is a true and correct copy of excerpts from Roy Thomas's January 20, 2023 deposition transcript in this matter. This excerpt was not included in Exhibit 2 to my May 19, 2023 declaration, which is an excerpt from the same deposition.

¹ The numbering in this declaration continues consecutively from the numbering in my May 19, 2013 declaration in support of MCI's motion for summary judgment. See Dkt. 71. Rather than re-submit evidence with MCI's opposition that was attached to my May 19 declaration, this declaration attaches only additional evidence not attached to my prior declaration.

² The parties effectively consolidated discovery across the three matters formally consolidated for pre-trial purposes in this case and *Marvel Characters, Inc. v. Hart-Rico*, No. 2:21-cv-07624-DMG-KES (C.D. Cal.) and *Marvel Characters, Inc. v. Solo*, No. 1:21-cv-05316-NRMTAM (E.D.N.Y.).

6. Attached hereto as **Exhibit 85** is a true and correct copy of excerpts from Nanci Solo's October 28, 2022 deposition transcript. This deposition was taken as part of consolidated discovery in this and other matters, and Ms. Solo was represented by the same counsel of record as Defendant.

7. Attached hereto as **Exhibit 86** is a true and correct copy of excerpts from Lawrence D. Lieber's October 25, 2022 deposition transcript in this matter. This excerpt was not included in Exhibit 3 to my May 19, 2023 declaration, which is an excerpt from the same deposition.

8. Attached hereto as **Exhibit 87** is a true and correct copy of excerpts from Stan Lee's March 14, 2013 deposition transcript in *Stan Lee Media, Inc. v. The Walt Disney Company*, No. 12-cv-02663 (D. Colo.), produced by MCI in this matter with the Bates numbers 2021MARVEL-0131405 – 2021MARVEL-0131482. This excerpt was not included in Exhibit 4 to my May 19, 2023 declaration, which is an excerpt from the same deposition.

9. Attached hereto as **Exhibit 88** is a true and correct copy of excerpts from Stan Lee's May 13, 2010 deposition transcript in *Marvel Worldwide, Inc. v. Lisa R. Kirby*, No. 10-cv-141 (S.D.N.Y.), produced by MCI in this matter with the Bates numbers 2021MARVEL-0130804 – 2021MARVEL-0130953. This excerpt was not included in Exhibit 13 to my May 19, 2023 declaration, which is an excerpt from the same deposition.

10. Attached hereto as **Exhibit 89** is a true and correct copy of excerpts from James Steranko's March 6, 2007 deposition transcript in *Siegel v. Time Warner Inc.*, Nos. 04-cv-8400 and 04-cv-8776 (C.D. Cal.).

11. Attached hereto as **Exhibit 90** is a true and correct copy of excerpts from Martin Goodman's December 14, 1967 deposition transcript in *Joseph H. Simon v. Martin Goodman et*

al. (N.Y. 1966), produced by MCI in this matter identified with the Bates numbers 2021MARVEL-0041165 – 2021MARVEL-0041264.

12. Attached hereto as **Exhibit 91** is a true and correct copy of Martin Goodman's November 13, 1967 bill of particulars in *Joseph H. Simon v. Martin Goodman et al.* (N.Y. 1966), produced by MCI in this matter identified with the Bates numbers 2021MARVEL-0056396 – 2021MARVEL-0056405.

13. Attached hereto as **Exhibit 92** is a true and correct copy of a document entitled "Marvel Comic Group[:] Rate Card No. 4" (September 1947), produced by MCI in this matter identified with the Bates numbers 2021MARVEL-0039903 – 2021MARVEL-0039909.

14. Attached hereto as **Exhibit 93** is a true and correct copy of a document entitled "Marvel Comic Group[:] Rate Card No. 21" (September 1966), produced by MCI in this matter identified with the Bates numbers 2021MARVEL-0039915 – 2021MARVEL-0039918.

15. Attached hereto as **Exhibit 94** is a true and correct copy of excerpts from an interview entitled "The Gene Colan Interview" (June 17, 1995), reprinted in *The Invincible Gene Colan* (C. Meth ed., 2010), produced by Nanci Solo and Erik Colan (represented by the same counsel of record as Defendant) as part of consolidated discovery in this and other matters identified with the Bates number COLAN-0061 – COLAN-0067.

16. Attached hereto as **Exhibit 95** is a true and correct copy of excerpts from documents entitled "INTERVIEW: JIM STERANKO" and "HE COULDN'T WAIT," published in *Fantastic Fanzine* No. 11 (1970), produced by James Steranko (represented by the same counsel of record as Defendant) in this matter identified with the Bates numbers STERANKO-0165 – STERANKO-0184.

17. Attached hereto as **Exhibit 96** is a true and correct copy of a letter from Martin Goodman “TO WHOM IT MAY CONCERN,” dated March 20, 1967, produced by MCI in this matter identified with Bates number 2021MARVEL-0069166.

18. Attached hereto as **Exhibit 97** is a composite of true and correct copies of contract schedules produced by Martin Goodman in *Joseph H. Simon v. Martin Goodman et al.* (N.Y. 1966), identified with Bates numbers 2021MARVEL-0039774, 2021MARVEL-0039824, and 2021MARVEL-0039825.

19. Attached hereto as **Exhibit 98** is a true and correct copy of Lisa R. Kirby, Barbara J. Kirby, Neal L. Kirby, and Susan M. Kirby’s “[REDACTED] CONFIDENTIAL MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS’ OPPOSITION TO PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT,” dated March 25, 2011, filed in *Marvel Worldwide, Inc. v. Lisa R. Kirby*, No. 10-cv-141 (S.D.N.Y.), at Docket No. 96.

20. Attached hereto as **Exhibit 99** is a composite of true and correct images extracted from publicly available websites that depict excerpts of “Zatara the Master Magician” in *Action Comics* #12 (May 1939), “Merlin the Magician” in *National Comics* #13 (July 1941), “Tor the Magic Master” in *Crack Comics* #24 (July 1942), and *Mandrake the Magician* comic strips published in 1937 and 1944, respectively.

21. Attached hereto as **Exhibit 100** is a true and correct copy of *Doctor Strange* Vol. 1, No. 181 (July 1969).

* * *

I declare under penalty of perjury that the foregoing is true and correct, and was executed on June 30, 2023 in Los Angeles, CA.

By: 
Molly M. Lens